

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of	)	
Implementation of Section 621(a)(1) of	)	
the Cable Communications Policy Act of 1984	)	MB Docket No. 05-311
as amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	

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**COMMENTS OF THE CITY OF SAN DIEGO, CALIFORNIA**

These Comments are filed by the City of San Diego (“City”) in response to the Notice of Proposed Rulemaking soliciting comments in the above referenced proceeding. The City believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable service providers. In support of this belief, we wish to describe to the Commission how video franchising has worked in our community.

**Our Current Franchises**

The City of San Diego is a city in California with a population of nearly 1.3 million, and serves as the local franchise authority for approximately 365,000 cable subscribers. City has granted numerous cable franchises and renewals since the 1960s. Currently, our primary franchised cable providers are Cox Communications (“Cox”) and Time Warner Cable (“Time Warner”). The City also granted a competitive franchise to Western Integrated Networks (“WIN”) in 2001 that required WIN to build out its infrastructure in the incumbents’ franchise areas (or “overbuild”) within the City, consistent with California Government Code 53066.

Our current franchises with Cox and Time Warner were extended in 2003 and 2004 and expire in 2019 and 2020. The franchises require the cable operators to pay a franchise fee to the City in the amount of 5% of the cable operator's gross revenues.

We require the cable operators to provide capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one channel devoted to public access; one channel devoted to educational access; one channel devoted to government access; and one digital channel to be used for internal City training. One of our franchises contains a grant for \$3 million for telecommunications improvements, equipment and services.

Our original franchise requirements included a 2-year build out of designated service areas. Most populated areas of the City were built out many years ago. At the time, however, some areas of the City were too remote or sparsely populated to make provision of service economically feasible, and those areas were excluded from the build-out requirements.

### **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

A franchise is negotiated by the local government as a contract. In addition, California has enacted a "level playing field" statute (Government Code 53066) that requires competitive entrants to agree to similar terms and conditions as the incumbent provider. We have found that this requirement reduces the risk of time-consuming disputes raised by incumbent operators, as well as ensures equal access to competitive services to all subscribers in the incumbent's franchise area.

### **Competitive Cable Systems**

To allow for competition, the City's cable franchises are non-exclusive. In February 2000, the City received an application from Western Integrated Networks ("WIN") to provide competitive cable TV services. In June 2001, our community granted a competitive franchise to WIN; however that provider subsequently declared bankruptcy and is not providing service in the City today.

The City was able to develop a franchise acceptable to WIN in a short period of time. We found the competitive franchise process went well, with very few disputes over franchise terms, and no contests or formal protests from either the incumbent operator or the public.

Similarly, the City received an application in August 2000 from RCN Telecommunication Services ("RCN") to provide competitive cable TV services. A franchise agreement was negotiated and the City was set to grant the franchise in November 2000, however RCN withdrew its application just prior to final approval based on their reevaluation of the business opportunity in the City. Again, the City worked closely and in a timely manner to develop a mutually acceptable franchise agreement.

### **Conclusions**

As the above information indicates, the cable franchising process has worked well in the City of San Diego. Local governments are experienced at working with cable providers to ensure that both the needs of the local community and the practical business needs of cable providers are met. Local franchises provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of San Diego therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

City of San Diego, California



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